

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1606 OF 2004

- 1] Arun s/o. Bhila Patil,
Aged 60 years, occ. Business,
r/o. Plot No.63, Gopal Nagar,
Dhule
- 2] Nitin s/o. Prataprao Salunkhe,
Aged 40 years, occ. Service,
r/o. 12/B, Krishna-kamal Housing
Society, Golibar Tekdi, Dhule
- 3] Sambhaji Prataprao Salunkhe,
Aged 50 years, occ. Service,
r/o. 12/B, Krishna-kamal Housing
Society, Golibar Tekdi, Dhule ..Appellants

Versus

- 1] The Collector,
Dhule
- 2] The Land Acquisition Officer,
in the office of the Collector,
Dhule
- 3] The Executive Engineer,
National Highway Sakri Road,
Dhule
- 4] The Executive Engineer,
Public Works Department,
Dhule ..Respondents

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Mr.S.S.Choudhary and Mr.B.N.Arbad, advocates for appellants

Mr.S.P.Dound, AGP for respondents - State

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CORAM : M.T. JOSHI, J.

DATE : MARCH 10, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by dismissal of the suit, present appellants are before this Court.

3] The record would show that 62 Are land of the present appellants was converted into road by the respondents - State. According to the appellant, they had purchased the suit land on 4th February, 1987 and on 4th March, 1989. Their names were accordingly mutated in "D" Patrak. They came to know that the State has earlier published the notification under Section 4 of the Land Acquisition Act on 12th September, 1987. However,

after purchase of the land by the appellant, no notices were issued to them. Therefore, they sought for removal of the encroachment and in the alternative, for compensation.

4] The defendants – State came with a case that the land in question belonged to one Gangaram Gawali and only 62 Are land from the entire land admeasuring 3 Hecter 87 Are, was acquired by the State by issuing notification under Section 4 of the Land Acquisition Act and compensation was also paid to said Gangaram.

5] Learned trial Court, though agreed that the present appellants became owner of the land in question since September, 1989, the suit was dismissed on the ground that the compensation was paid to the previous owner of the suit land.

6] Learned counsel for the appellants submits that once it is found that the appellants were owners of the suit land, the necessary consequence would be that of either removal of the encroachment or grant of compensation.

7] On the other hand, learned AGP submits that admittedly, when the notification under Section 4 of Land Acquisition Act was issued on 12th September, 1987, present appellants were not owner of the suit land and according to them, they became owner of the suit land on 4th February, 1987 and 4th March, 1989, respectively. As such, during the land acquisition proceedings, the Land Acquisition Officer could not have knowledge of the transfer of part of the land in the meantime. He further pointed out that admittedly, the road was constructed in the year 1988 while, notice under Section 80 of the Code of Civil Procedure was issued by the present appellants on 16th

February, 1999. At the time of construction of the road from their plots itself, they could have made an inquiry regarding the acquisition, could have raised objection in the land acquisition proceeding and could also have asked for apportionment in the land acquisition proceedings. He, therefore, submits that the appeal may be dismissed.

8] On the basis of this material, following point arises for my determination :-

Whether the respondents have made illegal encroachment in the suit land ?

. My finding to the above point is in the negative and the appeal is, therefore, dismissed for the reasons to follow.

9] It is an admitted fact that while the notification under Section 4 of the Land Acquisition Act was issued on 12th September, 1987, according to the appellants, they have purchased the suit plots from entire area on 4th February, 1987 and 4th March, 1989. It has also come in the evidence that the road was constructed in the year 1988, however, admittedly, in the revenue record, their names were mutated in the year 1989 and therefore, the Land Acquisition Officer could not have any knowledge about transfer of the suit land during pendency of the land acquisition proceedings before him.

10] The road was constructed long back and thereafter, after eleven years, notice under Section 80 of the Code of Civil Procedure was issued by the appellants. In the circumstances, no fault can be found with the findings of the learned trial Court, since the compensation was

already paid to the previous owner of the suit land by adopting due procedure of law.

11] In that view of the matter, present appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI, J.]

kbp